

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: APPEAL**SUBSTANTIAL ISSUE DETERMINATION/DE NOVO FINDINGS**

Local government:.....Monterey County

Local Decision:.....Resolution 02-212 (PLN000239) Approved with conditions May 28, 2002 by the Monterey County Board of Supervisors (See Exhibit E).

Appeal Number**A-3-MCO-02-058**

Applicant.....Murray & Carol Smith

Appellants:Commissioners Sara Wan and John Woolley; Ken & Sharene Virnig, C/O Lombardo & Gilles, Attn: Todd Bessire; Janice M. O'Brien; Robert Berglass; Charles T. Olvis, and League of Women Voters of the Monterey Peninsula.

Project location.....3105 Seventeen Mile Drive, Pebble Beach (APN 008-012-007) (See Exhibits A, B, C) Del Monte Forest (Monterey County).

Project description.....Demolition of existing, one-story residence and construction of a new two-story single family residence with attached three-car garage, new driveway, addition and replacement of perimeter grape stake fence, new 6 ft. entry gate with stone columns and associated grading.

	Existing	As Approved by MCO	Applicant's Proposed Revised Plan
Project Site	42,121 square feet	42,121 square feet	42,121 square feet
Building Coverage	2,250 square feet (5.3%)	4,568 square feet (10.8%)	3,616 square feet (8.6%)
Non-Structural Coverage	600 square feet (1.4%)	5,554 square feet (13%)	5,910 square feet (14%)
Total Lot Coverage	2,850 square feet (6.7%)	10,122 square feet (24%)	9,526 square feet (22.6%)

File documents.....County coastal permit file PLN000239; Monterey County Board of Supervisors Resolution # 02-212; Monterey County Local Coastal Program, including *Del Monte Forest Land Use Plan* and *Monterey County Coastal Implementation Plan*.

Staff recommendation**Project raises a Substantial Issue; approval of *de novo* permit application**



California Coastal Commission
May 08, 2003 Meeting in Monterey

Staff: SAM Approved by:

with conditions.

Summary of Staff Recommendation

The project is located in the Del Monte Forest planning area of Monterey County (project vicinity and site location maps are shown in Exhibits A and B, respectively). The applicant proposes to demolish an existing 2,250 square foot, one-story single family home and to construct a 5,216 sf, two-story single family home, a 700 sf attached garage, a new driveway, a new 6 ft. entry gate, and to repair and replace a 4 to 6 ft. grape stake fence. The project proposes to increase site coverage from the existing 2,850 square feet (6.7% coverage) to approximately 9,526 square feet (22.6% coverage) on a lot that is entirely environmentally sensitive habitat in the form of remnant sand dunes.

Staff recommends that the Commission determine that **a substantial issue** exists with respect to the grounds on which the appeal has been filed, and that the coastal development permit be **approved with conditions** to mitigate the project's impacts on sensitive coastal resources, described herein.

The LCP requires protection of environmentally sensitive habitat areas (ESHA), among other ways, by prohibiting non-resource dependent development in ESHA, limiting the amount of vegetation and land that can be disturbed, and requiring deed restrictions or permanent conservation easements over ESHA. The project, as conditioned, is consistent with these requirements because it allows the owner to have an economic use of the site while minimizing disturbance to ESHA; because it decreases the amount of land disturbance and vegetation removal from the level of disturbance originally proposed; and because it protects the remainder of ESHA on site with a deed restriction.

The LCP requires protection of visual resources by requiring new development to minimize alteration to natural landforms and to be subordinate to and harmonize with the natural setting. The LCP also protects visual resources by requiring structures to be sited and designed to blend in with the natural setting, and for screening of new development in visually sensitive areas. While the proposed house is greater in height and thus more visually intrusive than the existing house, the proposed house can be found consistent with LCP visual policy 56 because the policy is vague and there are so many other houses of a similar nature in the area. Similarly, screening of the structure from public view with native vegetation cannot be done due to the low-growing nature of dune vegetation.

LCP Policy requires the preservation of historical cultural resources. While the house proposed for demolition provides an example of early Wrightian modern architecture, and is the only home of this type in the Pebble Beach area, an historian evaluated the house and determined that it is not of significant historical value. Thus, its demolition does not have a significant impact on historic resources.

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I. Staff Recommendation on Substantial Issue

The staff recommends that the Commission determine that a substantial issue exists with respect to the grounds on which the appeals were filed pursuant to Coastal Act Section 30603.

MOTION: Staff recommends a “NO” vote on the following motion:

“I move that the Commission determine that Appeal No A-3-MCO-02-058 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.”

STAFF RECOMMENDATION OF NO SUBSTANTIAL ISSUE:

Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

RESOLUTION:

The Commission hereby finds that Appeal No. A-3-MCO-02-058 presents a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

II. Staff Recommendation on De Novo Permit

MOTION: Staff recommends a “YES” vote on the following motion:

“I move that the Commission approve Coastal Development Permit No. A-3-MCO-02-058 pursuant to the staff recommendation.”

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO APPROVE THE PERMIT:



The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

III. Conditions of Approval

A. Standard Conditions

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the Permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the Permittee to bind all future owners and possessors of the subject property to the terms and conditions.

B. Special Conditions

1. **Final Site Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit two sets of final site plans for the Executive Director's review and approval, which demonstrate the following:
 - (a) Final site plan illustrating 1) the placement of the house at the 100-foot setback from the centerline of 17-Mile Drive; 2) the removal of the 780 square foot terrace area from the front of the house; 3) the removal of the guest parking/additional turn around area in the



driveway, and 4) that the finished floor elevation of the new house is at 37.0 feet USGS elevation.

- (b) Final site plan demarcating the building envelope, to include the building footprint; courtyard; motor court; and all other areas covered by impervious surfaces (including the decomposed granite driveway), and the habitat restoration areas. Areas covered by impervious surfaces (house, driveway, patios, etc.) shall not exceed 18% (7,650 square feet) of the 42,121 square foot lot area. Any additional changes to the plans originally submitted shall require Executive Director review and approval or an amendment to this permit
- (c) Perimeter fencing only. Fencing shall be of an open design, i.e. split rail. Fencing along the front (17 Mile Drive) shall not exceed 6 feet in height; side and rear property line fencing shall not exceed 4 feet in height. Fencing shall be a minimum of 75% open. All existing grape stake fencing shall be removed.

2. Dune Habitat Restoration Landscaping Plan. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit for the Executive Director's review and approval, two sets of dune habitat restoration landscape plans for the entire lot outside of the building envelope as designated on the final site plans required by Special Condition #1. The restoration plan shall be prepared using California native dune plant species appropriate to the site. The plan shall include an analysis by a qualified expert that considers the specific condition of the site including soil, exposure, temperature, moisture, and wind, as well as restoration goals. At a minimum, the plan shall demonstrate that:

- (a) All vegetation planted on the site will consist of native dune plants,
- (b) All required plantings will be maintained in good growing conditions throughout the life of the project, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with the landscape plan, and

The plans shall include, at a minimum, the following components:

- (a) A map showing the type, size, and location of all plant materials that will be on the developed site, the irrigation system (if any), topography of the developed site, and all other landscape features, and
- (b) A schedule for installation of plants within the first growing season after completion of construction.

Installation of all plants shall be completed prior to occupancy of the new home. Within 30 days of completion of the landscaping installation, the Permittee shall submit a letter from the project biologist indicating that plant installation has taken place in accord with the approved restoration plans and describing long-term maintenance requirements for the restoration. At a minimum, long-term



maintenance requirements shall include site inspections by a qualified biologist annually, or more frequently, to identify and correct any restoration and maintenance issues.

Five years from the date of completion of the addition, the Permittee or successors in interest shall submit, for the review and approval of the Executive Director, a restoration monitoring report, prepared by a qualified specialist, that certifies the on-site restoration is in conformance with the approved plan along with photographic documentation of plant species and plant coverage.

If the restoration monitoring report or biologist's inspections indicate the landscaping is not in conformance with or has failed to meet the performance standards specified in the Dune Habitat Restoration Mitigation Plan approved pursuant to this permit, the Permittee or successors in interest, shall submit a revised or supplemental restoration plan for the review and approval of the Executive Director. The revised restoration plan must be prepared by a qualified specialist, and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan.

3. Open Space Deed Restriction.

A. No development, as defined in Section 30106 of the Coastal Act, including improved pathways and garden accessories (i.e. pools, fountains, benches) shall occur in the protected area except for:

1. Necessary utility lines to serve the residence.

B. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall execute and record a deed restriction, in a form and content acceptable to the Executive Director reflecting the above restriction on development in open space. The deed restriction shall include legal descriptions of both the applicant's entire parcel and the open space area. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit, and shall provide:

A. For the protection and enhancement of the natural habitat values on all portions of the site, except for the building envelope area (i.e. 18% of the lot), as shown in the final site plans required by Special Condition #1. The deed restriction shall include provisions to prohibit all development outside of the approved building envelope, including benches, walkways and patios; and requiring that the maximum aggregate lot coverage (which includes the building footprint, driveway and any other paved areas, decks and terraces) shall not exceed 18% of the lot area.

The only exception to the prohibition of development outside of the approved building envelope is for utilities necessary to serve the residential use. The deed restriction shall also include provisions to: prevent disturbance of native groundcover and wildlife; to provide for maintenance and restoration needs in accordance with the approved Dune Habitat Restoration



Mitigation Plan (see above); to specify conditions under which non-native species may be removed, and to secure entry for monitoring of the restored area.

- B. For measures to implement the approved Dune Habitat Restoration Landscaping Plan prepared for the subject property as required by Special Condition #2.
- C. For fencing restrictions to allow free passage of native wildlife, as required by Special Condition #4.
- D. For a monitoring program as set forth in the approved mitigated negative declaration; and provide that, following construction, annual monitoring reports shall be submitted to the Executive Director and the City of Pacific Grove for review and approval for a period of five years.

4. Fencing. PRIOR TO COMMENCEMENT OF CONSTRUCTION, the permittee shall satisfy the following requirements:

- A. Permanent fencing shall be limited in design to 25% closed and 75% open area (i.e. split rail fence) to allow free passage of sand, seeds and wildlife. Any changes in fence design or placement will require the Executive Director's review and approval, and may require an amendment to this permit. No permanent fencing other than that shown on approved final plans, as required by Special Condition #2, is authorized by this permit without Executive Director approval. All existing fencing shall be removed.

5. Archaeological Mitigation. Should archaeological resources be discovered at the project site during any phase of construction, the permittee shall stop work until a mitigation plan, prepared by a qualified professional archaeologist and using accepted scientific techniques, is completed and implemented. Prior to implementation, the mitigation plan shall be submitted for review and approval by the State Historical Preservation Office and for review and approval by the Executive Director of the Commission. The plan shall provide for reasonable mitigation of the archaeological impacts resulting from the development of the site, and shall be fully implemented. A report verifying compliance with this condition shall be submitted to the Executive Director for review and approval, upon completion of the approved mitigation.

6. Environmental Monitoring During Construction. Permittee shall employ an environmental monitor who is approved by the Executive Director and the County of Monterey's Planning Department to ensure compliance with all mitigation requirements during the construction phase. Evidence of compliance with this condition by the project monitor shall be submitted to the Executive Director each month while construction is proceeding and upon completion of construction.

7. Utility Connections. All utility connections shall remain underground. When installing any new utility connections, care shall be taken to minimize disturbance of the deed-restricted vegetation in accordance with Special Conditions 2 and 3.

8. Incorporation of County Mitigation Requirements. The Mitigations adopted by the Monterey County Board of Supervisors for this project are attached to this permit as Exhibit E (Pages 7-12). All



conditions of the County permit imposed under an authority other than the Coastal Act remain in effect. Conditions 17, 18, 20, 21 25, 26, 29, 31-33 and 37 are hereby deleted and superceded by the Special Conditions of this permit.

Any revision or amendment of these adopted conditions and mitigation measures or the project plans as approved by the Coastal Commission shall not be effective until reviewed by the Executive Director for determination of materiality, and if found material, approved by the Commission as an amendment to this coastal development permit.

IV. Local Government Action

The Monterey County Planning Commission originally approved a proposal for demolition and reconstruction of a single-family home on this site on October 31, 2002. The project was then appealed to the Monterey County Board of Supervisors, and a slightly redesigned project was approved on May 28, 2002 (Resolution #02-212). The proposed project involves the demolition of an existing one-story 2,250 square foot single-family dwelling, and the construction of a two-story, 5,216 sf single-family dwelling. The project also includes an attached, 700 sf two-car garage, a new driveway and motor court, repair and replacement of a 4 to 6 ft. grape stake fence and a new 6 ft. tall entry gate.

County approval of the project includes adoption of a Mitigated Negative Declaration and Mitigation Monitoring Plan, and approval of a Coastal Administrative Permit and Design Approval (PLN000239), subject to 37 special conditions of approval. All permit findings and conditions are included in Exhibit E.

V. Summary of Appellants' Contentions

The appellants have appealed the final action taken by the Monterey County Board of Supervisors (Resolution 02-212), asserting that approval of the project is inconsistent with policies of the Monterey County Local Coastal Plan in the following areas:

- a. Environmentally Sensitive Habitat Areas (ESHA)
- b. Visual Resources
- c. Need for Comprehensive Environmental Review
- d. Historic Resources

The complete text of the appellants' contentions can be found in Exhibit F.

VI. Standard of Review for Appeals



The grounds for appeal to the California Coastal Commission under section 30603 of the California Coastal Act are limited to allegations that the development does not conform to the standards set forth in the certified local coastal program and the public access policies of the Coastal Act if the project is located between the first public road and the sea. Section 30625(b) of the Coastal Act requires the Commission to conduct a *de novo* coastal development permit hearing on an appealed project unless a majority of the Commission finds that “no substantial issue” is raised by such allegations. Under section 30604(b), if the Commission conducts a *de novo* hearing, the Commission must find that the proposed development is in conformity with the certified local coastal program. This project is appealable because Section 30603(a)(1) allows for appeals of any development located between the first public road and the sea.

VII. Recommended Findings and Declarations

The Commission finds and declares as follows:

A. Project Description and Location

The project consists of demolition of the existing one-story house and replacement with a larger two-story single family home, an attached two-car garage, a motor court, repair and replacement of a 4 to 6 foot grape stake fence, the addition of a 6-foot entry gate, and the addition of a guest parking/turnaround area and a 780 square foot terrace area at the front of the house. The existing, one-story, 2,250 square foot house and 600 square feet of paving are currently located on the front of the lot, close to Seventeen Mile Drive, almost directly across from the Bird Rock pull out, in the Del Monte Forest planning area of unincorporated Monterey County (See Exhibit B). As conditioned, the proposed two-story house and attached garage will have a footprint of 3,775 square feet, and the courtyard, driveway and auto court will cover roughly 3,875 square feet of the lot, for a total of 7,650 square feet or 18% lot coverage.

Seventeen Mile Drive is a highly visited scenic drive prized for its expansive views of the Pacific Ocean, that also provides fairly low cost visitor recreational opportunities. Surrounding land uses adjacent to the project area include single-family residential units to the north, east and south sides of 17-Mile Drive, a 20-acre dune restoration area located just to the north of the site, and open ocean to the west. The existing homes in this area consist of primarily one-story homes and some two-story homes.

The Spyglass Hill Golf Course is located slightly inland of the site, and the Cypress Point Golf Links is located roughly 2,000 feet to the south. Physically, the area is generally comprised of remnant sand dunes, which change gradually into Monterey pine forest (See Exhibit J). The area is included in the Asilomar dune system, which stretches roughly 4 miles from Point Pinos in the north to Fan Shell Beach to the south, and has the same physical characteristics including the same types of rare vegetation and animal species.

B. Analysis of Appeal Issues



1. Environmentally Sensitive Habitat Resources

A. Appellant's Contentions

The appellants contend in part that the project on appeal is inconsistent with the Certified LCP for the following reasons (See Exhibit F for complete text of appellants' contentions):

- The project consists of new development in ESHA that is not dependent on the "resources therein".
- The project has not been sited and designed to prevent impacts to ESHA.
- A scenic and conservation easement is required over ESHA, and the County easement requirement does not include all ESHA on site.
- The County approval allows for non-native landscaping in ESHA.
- The project allows for a circuitous driveway rather than keeping access simple and direct.

B. Local Coastal Program Provisions

The appellants specifically reference the following Del Monte Forest Land Use Plan (LUP) and Coastal Implementation Plan (CIP) policies regarding environmentally sensitive habitat resources:

- **Policy 8** *Environmentally sensitive habitat areas that are not designated as rehabilitation areas shall be protected against any significant disruption of habitat values. Within environmentally sensitive habitat areas, new land uses shall be limited to those that are dependent on the resources therein. Land uses immediately adjacent to environmentally sensitive habitat areas shall be compatible with long-term maintenance of the resource; development shall be sited and designed to prevent impacts which would significantly degrade the protected habitat...*
- **Policy 13** *The protection of environmentally sensitive habitats shall be provided through deed restrictions or permanent conservation or scenic easements granted to the Del Monte Forest Foundation. Where developments are proposed within or near areas containing environmentally sensitive habitat, such restrictions or easements shall be established through the development review process...*
- **Policy 14** *Near environmentally sensitive habitat areas, the removal of indigenous vegetation and land disturbance (grading, excavation, paving, etc.) shall be restricted to the minimum amount necessary to accommodate development....*
- **Policy 15** *The use of non-invasive plant species and appropriate native species shall be required in landscape materials used in projects, especially in developments adjoining environmentally sensitive habitat...*
- **Policy 17** *Prior to approval of development on existing legal lots of record, protection of rare, endangered, and sensitive native plant and animal habitats which potentially occur in the area shall be ensured by the following means:*



- *A site survey shall be conducted by a qualified botanist (or biologist in the case of animal habitat) for the purpose of determining the presence of rare, endangered, or unique plants and developing appropriate mitigation. This survey should be conducted in April or May, as it must be designed to detect the presence of any of the habitats listed in Appendix A of this Plan.*
- *Performance standards covering building locations, lot setbacks, roadway and driveway width, grading, and landscaping shall be established as a means of carrying out the recommendations of the site survey. The purpose of this is to isolate building sites from identified locations of rare or endangered plants or other environmentally sensitive habitat.*
- *Scenic or conservation easements covering the environmentally sensitive habitat shall be dedicated to the Del Monte Forest Foundation as provided by policy 13 above.*
- **Policy 18** *Uses of the remnant native sand dune habitat shall be limited to low-intensity scientific, educational, or recreational activities dependent on the resource, except in Spanish Bay rehabilitation area, where policy 93 shall apply. Particular attention shall be given to protection of rare and endangered plants from trampling...*
- **Section 20.147.040.B.3.b** *Scenic or conservation easements covering the environmentally sensitive habitat shall be dedicated to the Del Monte Forest Foundation as provided by Development Standard #7 of this section (Ref. Policy #17 Del Monte Forest Area Land Use Plan. The easement may also be extended to cover the buffer area required in Section 20.147.040.B.1, upon recommendation in the biological survey prepared for the project pursuant to Section 20.147.040.A as needed to protect the habitat's long-term maintenance.*
- **Policy 74** *Environmentally sensitive habitat areas will remain undeveloped except for parking or similar access facilities. Access improvements shall be developed consistent with the site-specific recommendations of the LUP Access Maps (Appendix B)*

Also relevant is the LCP's definition of ESHA:

- *Environmentally sensitive habitat areas are those in which plant or animal life or their habitats are rare or especially valuable due to their special role in an ecosystem. These include rare, endangered, or threatened species and their habitats; other sensitive species and habitats such as species of restricted occurrence and unique or especially valuable examples of coastal habitats; riparian corridors; rocky intertidal areas; nearshore reefs; offshore rocks and islets; kelp beds; rookeries and haul-out sites; important roosting sites; and Areas of Special Biological Significance (ASBS).*
- *In the Del Monte Forest Area, examples of terrestrial, aquatic, and riparian habitats which have been determined to be entirely or in part environmentally sensitive include: the rare Monterey cypress and endangered Gowen cypress forest communities, the endemic Monterey*



pine/Bishop pine association, remnants of the indigenous coastal sand dunes, riparian corridors, wetlands, and sites of rare and endangered plants and animals associated with these and other habitats. A complete listing is included as Appendix A of this Plan. The locations of these are shown in Figure 2.

C. Local Government Action

Finding numbers 1 and 2 in the County's action (Resolution 02-212, Exhibit E) address environmentally sensitive habitat issues. Finding #1 (Exhibit E, Page 1) states that the project is consistent with the plans policies, requirements and standards of the LUP. Evidence listed here is the biological reports prepared by Jean Ferreira (August 15th and 22nd of 2000 and May 8, 2001, attached as Exhibit G).

Finding #2 (Exhibit E, Page 3) states that the project will not have significant adverse impacts on the environment, and that a Mitigated Negative Declaration was prepared and the project incorporates all mitigation measures noted therein. The finding also includes approval of a monitoring report. Evidence for this finding states that no facts or reasonable assumptions have been submitted that refute the conclusion of the biological report by Jean Ferreira.

In addition to the County's findings, conditions of approval are placed on the project to mitigate for potential impacts to environmentally sensitive habitat areas. Condition #1 requires a Mitigation Monitoring Agreement; #17 requires a conservation and scenic easement over the rear portion of the property, the proposed dune restoration area, the 100' setback from the centerline of Seventeen Mile Dr., and the 20' side yard setback areas. The easement may allow for "private recreational access and enjoyment" including the placement of a boardwalk and a bench in the environmentally sensitive habitat area. Condition #18 requires a reduction in size of the motorcourt by removing the 10' wide extra parking area at the side of the garage, Condition #20 requires restoration of 7,000 sf of the lot to provide habitat area for the Monterey spineflower, and #21 requires a restoration plan for the "propagation and introduction of the Monterey spineflower" to the restored areas. Other conditions the County placed on the project include a biological monitor prior to construction, a pre-construction training session about the sensitivity of the area, a long-term management plan for the habitat area, moving the structures 10 feet toward 17-Mile Dr., and for landscaping with low water use or native drought resistant plants.

D. Substantial Issue Analysis and Conclusion

1) The Project Site is ESHA

The project site is located within the Asilomar dune complex, on the east side of 17 Mile Drive in a fairly large sand dune system referred to as the Spyglass Hill sand dune area (See Exhibit G, Ferreira 2000). The Asilomar Dune complex is approximately 4 miles long and extends from Point Pinos on the north end, south to Fan Shell Beach (See Exhibit H). Asilomar and most of the Monterey area coastline is formed by Santa Lucia granodiorite. This dense, hard rock is comprised of large rectangular crystals of feldspar, quartz, and mica. It was exposed through massive uplifts and this movement caused it to crack. The cracks



weaken the integrity of the rock, making it more vulnerable to erosion. During severe winter storms the sand is moved from the shoreline into the ocean where it forms sandbars just off shore. In spring, the gentler waves redeposit the sand onto the beach. In late spring, the winds blow the unusually pure, white quartz sand, farther inland where it is caught by plants in the foredunes.

The Asilomar Dune system, including the project site, is an environmentally sensitive habitat area for several reasons. First, coastal dunes are an extremely limited environmental resource of statewide significance. Oceanfront dunes provide unique, sensitive habitat values. Throughout its history, the Commission has placed a high priority on the protection and preservation of dune systems, including the Asilomar Dune system (Examples include Bonnanno, Griggs & Miller 3-83-110; Page 3-96-102; Knight 3-99-071 Baldacci 3-01-013 and Child 3-02-023). The native landscape of the Asilomar Dunes comprises a community of coastal plants and associated animal life distinct from all other areas of California. For these reasons, this landscape is worthy of maximum protection and restoration.

Coastal dune ecosystems are threatened by the loss, fragmentation and disruption of habitat associated with development. For example, of the 27 dune fields in coastal California, the Monterey Bay dune system is one of the largest covering about 40 square miles. However, less than half of the dune field has survived urbanization, conversion to military or agricultural uses, sand mining, and shoreline erosion.

The Department of Fish and Game (DFG) has identified the Spyglass Hill area as a “significant natural area.” Pursuant to a list of criteria including: 1) the occurrence of extremely rare species or natural communities and, 2) an ensemble of three or more rare species or natural communities within 500 meters of each other, this area has been mapped on the DFG Significant Natural Areas map for Monterey County. The Significant Natural Areas program was established to identify high-priority sites for the conservation of California’s biological diversity and to inform decision makers about the importance of these sites. The programs goals include: 1) identifying the most significant natural areas in California; 2) ensuring the recognition of these areas; and 3) seeking the long-term perpetuation of these areas.

Coastal staff conducted a reconnaissance-level biological survey of the site on September 4, 2002. The plant community observed on-site can be classified as central dune scrub (Holland 1986), characterized by medium to low shrubs on exposed slopes of poor soil. Common plant species observed in the habitat include mock heather (*Ericameria ericoides*), beach sagewort (*Artemesia pycnocephala*), and beach primrose (*Camissonia cheiranthifolia*). Central dune scrub was identified as having “highest inventory priority” in 1986 by DFG. This plant community is limited in distribution throughout its range and is considered rare.

One of the most critical functions of the dune system is its role as a habitat for a very unique flora and fauna. Species present in this habitat are specially adapted to the conditions and opportunities found in dunes. Dune plants in particular play a special role by both stabilizing the dunes from the effects of wind erosion and hosting rare fauna. However, as the natural dune system has been reduced and fragmented, the risk of extinction has increased for many of these species. Thus, each new impact within the dunes system has and will continue to contribute to the cumulative decline of these species.

A review of the California Natural Diversity Database (CNDDB) to evaluate the special-status species



that have been documented in the vicinity of the Smith Property was conducted by Coastal staff. A number of listed and declining sand endemic species have been observed near the site (Tables 1 and 2). This is an area rich in biodiversity and high in endemism and therefore, there are many special-status species that occur in the dune habitat.

Table 1. Special-Status Animal Species Known to Occur in the Spyglass Hill Area

Common Name	Scientific Name	Status
Black legless lizard	<i>Aniella pulchra nigra</i>	State Species of Special Concern
Smith's blue butterfly	<i>Euphilotes enoptes smithi</i>	Federal Endangered Species
Globose dune beetle	<i>Coelus globosus</i>	Federal Species of Special Concern

Table 2. Special Status Plant Species Known to Occur in Spyglass Hill Area

Common Name	Scientific Name	Status
Coastal dunes milk-vetch	<i>Astragalus tener</i> var. <i>titi</i>	State and Federal Endangered Species
Monterey spineflower	<i>Chorizanthe pungens</i> var. <i>pungens</i>	Federal Threatened Species
Menzies's wallflower	<i>Erysimum menziesii</i> ssp. <i>menziessii</i>	State and Federal Endangered Species
Sand gilia	<i>Gilia tenuiflora</i> ssp. <i>arenaria</i>	State Threatened and Federal Endangered Species
Beach layia	<i>Layia carnosa</i>	State and Federal Endangered Species
Tidestrom's lupine	<i>Lupinus tidestromii</i>	State and Federal Endangered Species
Monterey Indian paintbrush	<i>Castilleja latifolia</i>	CNPS List 4

According to surveys conducted on the property for special-status plant species on August 15 and 22, 2000, and May 8, 2001 (See Exhibit G, Ferreira 2000, 2001), the site is currently known to support at



least one listed plant species, the federally listed Threatened Monterey spineflower (*Chorizanthe pungens* var. *pungens*). Monterey spineflower was listed by the US Fish and Wildlife Service in 1994 due to threats to its persistence from: industrial, residential and golf course development, recreational use, dune stabilization projects, agricultural conversion, and military activities (Federal Register 1994). This plant species is only found scattered on sandy soils along and adjacent to the coast of southern Santa Cruz County and northern Monterey Counties and inland to the coastal plain of Salinas Valley (Federal Register 1994).

Monterey spineflower is vulnerable to random fluctuations or variation (stochasticity) in annual weather patterns and other environmental factors (Federal Register 1994). This species is an annual plant and a portion of the seeds produced each year lay dormant in the upper layer of sand in what is referred to as the “seedbank.” Only a small fraction of the seeds produced by a plant each year become seedlings, thus locations of individual plants vary from year to year. Due to this phenomena, it is critical that conservation efforts for the species focus on protecting the ecosystem within which the plant occurs rather than focusing on where a few individuals are observed in a given year. This approach will allow the species to shift in distribution over time, an inherent aspect of the species ecology.

The long term probability of the conservation of Monterey spineflower is dependent upon the protection of existing population sites, and the maintenance of ecological functions within these sites, including connectivity between sites within close geographic proximity to facilitate pollinator activity and seed dispersal mechanisms, and the ability to maintain disturbance factors (i.e., dune dynamics) that maintain the openness of vegetative cover on which the species depends (Federal Register 2002). Fragmentation of habitat (e.g. through the construction of roads or certain types of fencing) must be minimized so that seed dispersal agents may move the seed (Federal Register 2002) and to facilitate pollinator activity as well. Therefore, it is important to preserve all areas that currently support the species since it has already undergone a reduction in the range which places great importance on the conservation of all known remaining sites (Federal Register 2002).

Since this population is the southern most occurrence of the species along the coast, the individuals may have genetic characteristics that have allowed them to survive under slightly different environmental conditions than the other populations. This potential uniqueness may be important for the long-term survival of the species (Federal Register 2002).

The surveys conducted by Elkhorn Native Plant Nursery did not reveal the presence of any other special-status plant species. However, due to the transient nature of some of these plant species, it is possible that they may exist in the seed bank on the site.

It is also noted that, the survey report prepared by Elkhorn Native Plant Nursery overlooked the presence of Monterey Indian paintbrush on the site. This species was observed on the site by consulting biologist, Jeff Norman (See Exhibit I), and coastal staff confirmed its presence. This species is identified on CNPS List 4, which is designated for species that are significant locally. The presence of this species is an indication of a plant community that is maintaining biological integrity.

Several animal species also have the potential to occur on the site including; Smith’s blue butterfly



(*Euphilotes enoptes smithi*), globose dune beetle (*Coelus globosus*) and black legless lizard (*Anniella pulchra nigra*). While these three species were discussed in the applicant's biological report, their potential occurrence was dismissed, inappropriately, without having conducted surveys.

Smith's blue butterfly is a federally-listed Endangered butterfly that once ranged along the coast from Monterey Bay south through Big Sur to near Point Gorda, occurring in scattered populations in association with coastal dune, coastal scrub, chaparral, and grassland habitats. They spend their entire lives in association with two buckwheat plants in the genus *Eriogonum*. Emerging in late summer and early autumn, the adults mate and lay eggs on the flowers of these host plants. The eggs hatch shortly thereafter and the larvae begin to feed on the flowers of the plant. Important habitat for the Smith's Blue is threatened by development and the invasion of non-native plants. Dune buckwheat (*Eriogonum parvifolium*), a Smith's blue butterfly host plant, has been documented on the project site.

The globose dune beetle, a federal species of special concern, is endemic to California's coastal dune system. These beetles are primarily subterranean, tunneling through sand underneath dune vegetation. The species is fairly widely distributed in spite of the fact that the adults lack functional wings, however, due to habitat losses, there is some concern about its continued existence. Therefore, this species requires careful monitoring. Although no globose dune beetles were observed on the property by Elkhorn Native Plant Nursery, surveys were not conducted for species and therefore it is not possible to rule out their potential presence.

The black legless lizard is a fossorial (burrowing) animal that typically inhabits sand or loose soil. This species is regarded as a Species of Special Concern by DFG because of habitat loss due to human impacts to coastal dune habitats (Jennings and Hayes 1994). The potential for this species to occur on the site was identified in the biological report prepared for the applicant (See Exhibit G, Ferreira 2000). Ms. Ferreira states "if the lizard is present on the site, they would likely be near the mature mock heather shrubs in the 'Habitat' area." However, knowledge of the longevity, movement, and microhabitats of these lizards is incomplete because studying them in their underground habitat is difficult. Recent studies have shown that the legless lizards can utilize many different microhabitats and may reside in the soil/sand at a maximum depth of 11.5 cm. Therefore, assumptions of species/habitat affinities stated in the biological report may not be based on current knowledge of the species ecology, and its potential presence cannot be dismissed.

In conclusion, based on the above evidence, including the location of the site within the significant and sensitive Asilomar dune ecosystem, the existing resources on site, biology reports prepared for the project site, and the fact that a rare plant community, a federally-listed threatened plant, and potentially several other sensitive species occur on the site, the Commission finds that the project site meets the definition of ESHA established in the LCP.

2) The Project is Inconsistent with LCP Protection Provisions

The LCP contains numerous policies designed to protect environmentally sensitive habitat areas such as the area's indigenous remnant coastal sand dunes. Policy 8 prevents disruption of ESHA and restricts development to that which is resource dependent, such as nature study, and LCP Policy 18 specifically limits use of remnant sand dune habitat to "low-intensity scientific, educational, or



recreational activities dependent on the resource...". Additionally, Policies 13 and 17 require conservation easements over the sensitive habitat areas, and Policies 14 and 15 restrict removal of indigenous vegetation and the use of non-native plant species for landscaping. Policy 17 also provides for change in building design and location to avoid impacts to ESHA.

The project is inconsistent with LCP policies 8 and 18 because it involves residential development that is not resource dependent, nor a scientific, educational or recreational use, in remnant dune ESHA. As shown in project plans approved by Monterey County, the project involves the expansion of an existing house (through demolition and rebuild) into sensitive dune habitat (See Exhibit D, Page 1). The proposed development would increase coverage from approximately 6.8% of the lot (2850 sq. ft), to roughly 24% (10,122 sq ft). This approval allows an unnecessary increase in the building footprint for a residential (i.e. non resource dependent) use in ESHA. In addition to a significant increase in the house size, its design includes a large motor court in the rear of the house and longer driveway than currently exists. Also, the proposed 6-8 foot tall grape stake fence is not consistent with avoiding impacts to the dune habitat system because its closed design prohibits the free movement of sand and seeds required for a healthy dune system. Although site plans show an existing fence around the perimeter of the property (See Exhibit D), a staff site visit confirmed that the existing fence does not surround the property, leaving the dune habitat in the rear of the property easily accessible to animals and the dispersal of seeds.

The development is also inconsistent with LCP policies 13 and 17 because the proposed conservation easement area does not protect all ESHA on site outside of the building envelope. The issue of houses being proposed in this southernmost area of the Asilomar Dunes Complex is likely to continue to be of concern, making size and placement of structures and obtaining conservation easements and deed restrictions even more critical. The area contains twenty-two lots with existing houses, eleven of which have scenic and conservation easements or deed restrictions (See Exhibit M). The balance of the homes are pre Coastal Act, and because they older structures and generally smaller in size than newer development, it is likely that they will be sold in the foreseeable future to people who plan to demolish the existing house and rebuild. With the turnover of these older homes, the opportunity arises to protect sensitive dune habitat through minimization of lot coverage and placement of the remainder of the lot in a conservation easement or deed restriction.

Moreover, the project has not been designed and sited to avoid impacts to ESHA, inconsistent with LCP policies 17 and 8. For example, the construction of a larger house and driveway/motor court will result in the removal of ESHA; an impact that could be avoided by siting and designing the home to be similar in size and location to the existing home (see de novo findings for more detail). The project is similarly inconsistent with LCP policy 14 because the removal of indigenous vegetation and land disturbance has not been minimized. Finally, the project is inconsistent with Policy 15 because the local approval does not limit landscaping material to native plants. Thus, the project does not adequately protect the dune habitat resources along Seventeen Mile Drive in the Del Monte Forest, and raises a substantial issue regarding inconsistency with LCP policies 8,13, 14, 15, 17, and 18.



2. Visual Resources

A. Appellants' Contentions

The appellants contend in part that the project on appeal is inconsistent with the Certified LCP for the following reasons:

- This project is disproportionate to the lot and the adjacent front line houses.
- This project will impact the viewshed of the Bird Rock viewing area and Spyglass Hill Road.
- The house location does not blend in with the dunes.

B. Local Coastal Program Provisions

The appellants specifically reference the following Land Use Plan (LUP) and Coastal Implementation Plan (CIP) policies regarding visual resources (See Exhibit F for complete text of appellants' contentions):

- **Policy 51** *Areas within visually prominent settings identified on the LUP Visual Resources Map, when proposed for development, should be developed so that the lots and/or buildings are situated to allow the highest potential for screening from view the development and its access roads....*
- **Policy 55** *Areas within the viewshed of scenic corridors identified on the LUP Visual Resources Map shall be zoned with a district, which requires adequate structural setbacks (generally a minimum of 50), the siting and design of structures to minimize the need for tree removal and alterations to natural landforms. New structures shall be designed to harmonize with the natural setting and not be visually intrusive.*
- **Policy 56** *Design and siting of structures in scenic areas should not detract from scenic values of the forest, stream courses, ridgelines, or shoreline. Structures, including fences, shall be subordinate to and blended into the environment, using appropriate materials, which will achieve that effect. Where necessary, modifications shall be required for siting, structural design, shape, lighting, color, texture, building materials, access, and screening.*
- **Policy 57** *Structures in scenic areas shall utilize native vegetation and topography to provide screening from the viewing area. In such instances, the least visible portion of the property should be considered the most desirable building site location, subject to consistency with other siting criteria (e.g., proximity to environmentally sensitive habitat areas and safe access).*
- **Policy 58** *Parking on the seaward side of 17-Mile Drive should be designed to minimize the visual impact of parked vehicles in the viewshed and disturbance to the habitat. The appropriate site specific access recommendations shall apply to this area.*
- **CIP Section 20.147.070.A. Public Viewshed Determination1** *The project planner shall make an on-site investigation in order to determine whether the project is within the public viewshed or affects visual access from public viewing areas. Proposed buildings shall be accurately*



indicated as to dimensions, height and rooflines by poles with flags. The location of proposed access roads shall be accurately indicated by stakes with flags. Both poles and stakes shall remain in place for the duration of the project review and approval process. The project planner, at his/her discretion in the process of the on-site review, may record the proposed development photographically, and may require that the applicant superimpose on the photographs a representation of the proposed project. During the on-site investigation, the planner shall also review the project for conformance with the ordinance elements and shall determine development alternatives which would bring the project into full conformance with the ordinance.

- ***CIP Section 20.147.070.C. General Development Standards 1*** Development, along with related access roads, within visually prominent settings as identified on Figure 2C “Visual Resources” in the Del Monte Forest Area Land Use Plan shall be sited on the least visible area of the lot, subject to consistency with other development standards of this implementation ordinance and as determined by staff field review of the proposed development on its’ impact of visual sensitivity. Structures shall be screened from view using native vegetation and topography (Ref. Policy #50 Del Monte Forest Area Land Use Plan.)
- ***CIP Section 20.147.070.C. General Development Standards 3*** Ridgeline development is prohibited... “Ridgeline Development” is development on the crest or side of a hill which creates a silhouette against the sky when viewed from a public viewing area. A Use Permit for such development may only be granted if the decision-making body is able to make findings that: 1)... 2)... or 3) development on the ridge will minimize grading, tree removal or otherwise better meet resource protection policies of the Del Monte Forest Area Land Use Plan or development standards of this ordinance...

C. Local Government Action

The County’s action (Resolution 02-212, Exhibit E) allows for the demolition of a single-story home and its replacement with a larger two-story home on Seventeen Mile Drive. Finding #1 (Exhibit E, Page 1) states that the project is consistent with the plans policies, requirements and standards of the LCP. Evidence for this finding states that Planning and Building Inspection staff reviewed the project for conformity with the LCP. There is no separate finding dealing with visual impacts of the development.

The project is conditioned to use unobtrusive lighting and control off-site glare, to get approval from the Planning and Building Inspection Department regarding the location, type and size of all antennas, satellite dishes and similar appurtnances, and to protect native trees located close to the construction site. Additionally, the project is conditioned to require landscaping, and to continuously maintain the plant material “in a litter-free, weed-free, healthy, growing condition.”

D. Substantial Issue Analysis and Conclusion

The protection of visual resources in the Del Monte Forest planning area is of high concern. There are numerous LCP policies designed to protect visual resources in this planning area, especially along scenic corridors and other sensitive visual areas, such as those visible from Point Lobos State Park. The visual Policy Guidance Statement describes 17-Mile Drive as an important visitor destination and lists the



objective of the Plan as the protection of the area's "magnificent scenic and visual resources." Also found in the Policy Guidance Statement are the guiding principles of avoiding incompatible development and to encourage improvements that complement the natural scenic assets. This statement explicitly states, "only compatible development along 17-Mile Drive should be allowed."

The appellants contend that the new house will have visual impacts, specifically that it will be too large for the lot; that it will impact public viewing areas such as the Bird Rock pull out and Spyglass Hill Rd.; and that the house location does not blend in with the dunes. Their concern is that this project will have impacts on the viewshed from the 17-Mile Drive scenic corridor.

The project does not block views to the shoreline from 17-Mile Drive, but will be quite visible on the landward side of the drive, and this is potentially inconsistent with Policy 56. However, due to the topography of the site and the low-growing dune vegetation, it would be nearly impossible to place a structure on the site that would be invisible or even substantially screened from 17-Mile Drive or the Bird Rock viewing area. The height of the proposed structure is 26 feet 10 inches, with a steep sloping roof, as opposed to the existing structure's one story and flat roofs with stepped increases to the full height (see Exhibit D for site elevations). The proposed fence is also inconsistent with this policy because its design will breakup the relatively expansive views along the shoreline and scenic corridor.

Additionally, the project is inconsistent with Policies 51 and 57 which require maximum screening with native vegetation and topography because the new house is unable to be adequately screened with native dune vegetation. Finally, the development will have ridgeline impacts because it will create a "silhouette against the sky when viewed from a public viewing area", which is prohibited by CIP Section 20.147.070.C.General Development Standards 3 (See Exhibit K).

While the project as proposed and conditioned by the County is inconsistent with LCP visual policies 56, 51, 57 and CIP Section 20.147.070.C, the inconsistencies do not rise to the level of substantial issue and thus the Commission finds that no substantial issue is raised with respect to visual issues. No substantial issue is raised with respect to LCP visual policies 51, 57 and CIP Section 20.147.070.C, because there is no other place on the lot to site the house so that it will be less visible. Also, the house will be screened somewhat by existing trees, but native dune vegetation will not provide any screening of the structure because it is primarily close to the ground, and the County has approved a number of other homes in this area that also create ridgeline development as defined in CIP Section 20.147.070.C.General Development Standards 3.

3. Need for Comprehensive Review

A. Appellants' Contentions

The appellants contend in part that the project on appeal is inconsistent with the Certified LCP for the following reasons:

- Lack of fair or impartial hearing.
- Findings not supported by the evidence.



- The decision was contrary to law.

The appellants do not specifically reference any LCP or LCIP policies with regard to the issue of comprehensive environmental review (See Exhibit F for complete text of appellants' contentions).

B. Local Coastal Program Provisions

The LCP contains the following relevant policies regulating the public hearing process and defining required findings for Coastal Administrative Permits:

- ***CIP Section 20.84.030 Public Hearing Required*** Any action to approve or deny any application for a discretionary permit by an Appropriate Authority, including the Board of Supervisors, shall require that a public hearing be held and notice given pursuant to this Chapter.
- ***CIP Section 20.76.050.C*** In acting on a Coastal Administrative Permit, the Appropriate Authority shall make findings as necessary to support its decision on the permit. Such findings shall address, but not be limited to, consistency with the Monterey County Local Coastal Program, site suitability, environmental issues, public access pursuant to Section 20.70.050.B.3 of this Title, and Variances where applicable. The findings shall include a determination that the subject property is in compliance with all rules and regulations pertaining to zoning uses, subdivisions, and any other applicable provisions of Title 20 and that all zoning violation abatement costs have been paid.

C. Local Government Action

Appeal findings #10, 11, and 13 (Exhibit E, Page 5) state that public hearings were held on October 29, 2001 with the Planning Commission; October 31, 2001 with the Planning Commission; and May 21, 2002 with the Board of Supervisors. The County adopted the findings required by CIP Section 20.76.050.C as findings 1, 2 and 3 of the final Resolution 02-212 (See Exhibit E, Pages 1-3).

D. Substantial Issue Analysis and Conclusion

The County conducted public hearings in accordance with LCP requirements and adopted the findings called for by 20.76.050. Thus, the appellants' contentions regarding hearings and findings do not raise a substantial issue. The more general contentions regarding evidence and consistency with the law are addressed in the other sections of this report. These sections conclude that, based on the evidence, the County's action is indeed in conflict with the LCP, and therefore raises a substantial issue.

4. Historic Resources

A. Appellants' Contentions

The appellants contend that the project on appeal is inconsistent with the Certified LCP because it involves the removal of a historic resource.



The appellants do not specifically reference any LCP or LCIP policies (See Exhibit F for complete text of appellants' contentions).

B. Local Coastal Program Provisions

The Land Use Plan and Coastal Implementation Plan contain policies designed to protect archaeological and cultural resources:

- **Policy 63** *When developments are permitted on parcels where archaeological or other cultural resource sites are located, project design shall be required which avoids impacts to such sites. Where the site has religious significance, emphasis should be placed on preserving the entire site; likewise, where the site is of known regional significance, consideration shall be given to nominating the site to the National Register and preserving it.*
- **CIP Section 20.147.080.D General Development Standards 1** *All development permitted on parcels containing archaeological or other sensitive cultural resources must design such development to avoid impacts to those sites. ... (Ref. Policy #63 Del Monte Forest Area Land Use Plan.)...*

C. Local Government Action

Finding #1 in Resolution 02-212 (Exhibit E, Page 1) states that the project is consistent with the "plans, policies, requirements and standards of the Local Coastal Program (LCP)." Evidence for this finding cites an archaeological report prepared by Archaeological Consulting, and states that the report "found no evidence of cultural or historical resources". The County did not evaluate the architectural significance of the existing structure.

D. Substantial Issue Analysis and Conclusion

The archaeological report prepared by Archaeological Consulting on July 31, 2000 states that no evidence of historic cultural resources were found on the parcel. Project methodology consisted of a literature search of files of the Northwest Regional Information Center of the California Archaeological Inventory located at Sonoma State University and a search of Archaeological Consulting's personal files and maps. Field reconnaissance was also conducted on July 18, 2000. In addition, the California Inventory of Historical Resources, California Historical Landmarks, and the National Register of Historic Places were checked for cultural resources that might be present other than archaeological resources. None were discovered.

Although no archaeological resources have been identified on the site, the appellants contend that the existing home to be demolished may indeed have historic significance, based on its architectural type, that merits an evaluation under LCP Policy 63 and IP section 20.147.080.D. A letter submitted by a historian hired by an appellant describes the existing house on the site, constructed in 1952-1953, as a Usonian house. According to the historian, this type of architecture, termed modern, was developed by Frank Lloyd Wright in the 1930's as a means to provide affordable housing in America. Usonian houses are characterized by low or flat roofs, finishes using natural materials, carports and the lack of basements, along with a flow of internal spaces, and a brick utility core with a massive chimney stack. The existing



house was not designed by Wright himself, but by one of his protégés, and is possibly the only example of a Wrightian Usonian house in Monterey County. The house in question, along with two others in the area, provide notable examples of modern architecture in close vicinity to the site (Pers. Comm. Kent Seavey 9/6/02).

Given the potential historic architectural design of the structure, a more in-depth review of its regional significance was performed by another historian, who concluded that the structure's architecture was not of significant historic value. Because the second review concluded that the existing structure is not a regionally significant historic resource, and it does not meet the National Register criterion of being older than fifty years and of exceptional importance, the LCP does not require the consideration of alternatives to protect the existing structure. Therefore, the Commission finds that the appeals raise no substantial issue with respect to protection of historic/cultural resources.

C. Substantial Issue Analysis- Conclusion

In conclusion, the appeal raises a substantial issue in terms of compliance with the LCP, with respect to environmentally sensitive habitat. The development approved by Monterey County, Board of Supervisors Resolution #02-212 does not conform to LCP policies protecting the natural resources of the project site as required by the Monterey County Certified Local Coastal Program.

D. De Novo Coastal Permit Findings

The County approval authorizes the demolition of an existing 2,250 square foot, one-story, single-family residence and replaces it with a 4,802 square foot, two-story single-family residence, courtyard, garage, and motor court. The applicant has revised the house design and floor plan to minimize coverage, but there is still an ESHA issue for reasons discussed in the Substantial Issue portion above. As discussed in the Substantial Issue findings above, **directly incorporated into these *de novo* findings by reference**, as proposed this project is inconsistent with the Monterey County LCP and cannot be approved without conditions to mitigate impacts to sensitive coastal dune habitat.

First, as established in the above findings, the project is located on Seventeen Mile Drive, in the Asilomar dunes complex, an area of remnant sand dune habitat. The applicant proposes a non-resource dependent development in ESHA, and has not avoided and minimized damage to the remnant dune habitat. Nor does the project provide for the maximum amount of protection of remaining dune habitat on site through the use of conservation easements. Therefore, this development is inconsistent with LCP policies 8, 13 17, 14 and 18, which respectively require development in ESHA to be resource dependent and require resiting or redesign to prevent impacts to ESHA; to provide conservation easements over the ESHA on site; to restrict land disturbance (paving) and removal of indigenous vegetation near ESHA; and uses in remnant dunes to be of a scientific, educational or recreational nature.

1) Implementing Section 30010 of the Coastal Act

The entire area of the applicant's 42,121 square foot (.967 acre) parcel is an environmentally sensitive



dune habitat. Other than the demolition, the proposed development includes a single-family dwelling, an attached garage, a driveway and motor court, new entry gates and fencing, and a courtyard. As conditioned, this project as revised by the applicant after County approval will result in a permanent loss of approximately 7,650 square feet (18%) of environmentally sensitive habitat.

Additional disruptions will result from residential development and subsequent use of the site, but these uses are generally amenable to native plant restoration and maintenance measures. Such activities may include: installation of a storm drain system, utility trenching and, over the long run, ordinary residential activities on the premises such as allowing pets and children in the habitat area. None of these development activities are of a type that is dependent on a location within the sensitive resource area, and it is reasonable to expect that these development activities, individually and collectively, will result in a significant disruption of the environmentally sensitive dune habitat area on site. Therefore, this project cannot be found consistent with Del Monte Forest LUP Policies 8 and 18.

However, as detailed in Finding 1 above, Del Monte Forest LUP Policies 8 and 18 must be applied in the context of the other Coastal Act requirements, particularly Section 30010. This section provides that the policies of the Coastal Act "shall not be construed as authorizing the commission . . . to exercise [its] power to grant or deny a permit in a manner which will take or damage private property for public use, without payment of just compensation." Thus, if strict interpretation of the restrictions in LUP Policies 8 and 18 would cause a taking of property the section must not be so applied and instead must be implemented in a manner that will avoid this result.

Once an applicant has obtained a final and authoritative decision from a public agency, and a taking claim is "ripe" for review, a court is in a position to determine whether the permit decision constitutes a taking. The court first must determine whether the permit decision constitutes a categorical or "per se" taking under *Lucas v. South Carolina Coastal Council* (1992) 505 U. S. 1005. According to *Lucas*, if a permit decision denies all economically viable use of property by rendering it "valueless," the decision constitutes a taking unless the denial of all economic use was permitted by a "background principle" of state real property law. Background principles are those state law rules that inhere in the title to the property sought to be developed and that would preclude the proposed use, such as the common law nuisance doctrine.

Second, if the permit decision does not constitute a taking under *Lucas*, a court may consider whether the permit decision would constitute a taking under the ad hoc inquiry stated in cases such as *Penn Central Transp. Co. v. New York City* (1978) 438 U.S. 104, 123-125. This inquiry generally requires an examination into factors such as the character of the government action, its economic impact, and its interference with reasonable, investment-backed expectations. The absence of reasonable, investment-backed expectations is a complete defense to a taking claim under the ad hoc inquiry (e.g., *Ruckelshaus v. Monsanto Co.* (1984) 467 U.S. 986, 1005, 1008-1009), in addition to any background principles of property law identified in *Lucas* that would allow prohibition of the proposed use.

Because permit decisions rarely render property "valueless," courts seldom find that permit decisions constitute takings under the *Lucas* criteria. For the reasons that follow, however, the Commission finds that there is sufficient evidence that a court might find that the denial of some non-resource dependent use



on this property would constitute a taking under the ad hoc takings analysis, and that the Coastal Act, therefore, allows the approval of a non-resource dependent use.

In this situation, this section of the Asilomar dune complex has already been subdivided into residential lots, and has, over the years, been partially developed. Indeed, the project site is currently developed with a residence and driveway. Additionally, residences are located directly adjacent to the project site, and other residences are in the immediate vicinity. In view of the location of the applicant's parcel and, in particular, its lot size, the Commission is unaware of any use that would be both dependent on the environmentally significant resources of the site as otherwise required by LUP Policies 8 and 18 and capable of providing an economically viable use. The Commission is also unaware of any intent by any public agency to purchase this or other similarly situated and zoned lots in this section of the Asilomar dune complex.

Additionally, it has been determined that the applicants purchased the property with the reasonable expectation that residential use would be allowed on this property based on a number of factors, primarily because of the existence of a single-family dwelling on the site. Additionally, the parcel is designated for residential use in the County's zoning ordinance. Also, the parcel is located on 17-Mile Drive, among other residential properties that have been developed with houses of a similar size to that proposed in this application, and where public utility service is currently available. As noted above, a majority of parcels in this section of the Asilomar dune complex area are already developed, including this site, and have been for some time. As a further basis of an expectation of residential use, the County has approved a number of homes in this area.

Additionally, the current applicants note that no hazardous conditions exist on the site, that there are no other potential clouds on legal title to the property and there is no evidence that residential use constitutes a nuisance.

After reviewing these factors (zoning, existence of similar homes approved by the County), the Commission finds that an applicant would have had reasonable basis for expecting that the County might approve a residential use of the property, subject to conditions that would mitigate the adverse impacts that likely would result from development in this sensitive resource area.

Finally, the applicants have submitted detailed information to demonstrate that their expectations were backed by substantial investments. The property was purchased for fair market value for residential property including a house in this area at the time of purchase. Since this purchase the property has generated no income in the form of rent, and has been taxed based on its current zoning designation as residential land. Accordingly, the Commission finds that the applicants had an investment-backed expectation that this property could be used for residential use, although the purchase price does not guarantee any particular size of development and is only one factor in the overall analysis.

In view of the findings that (1) none of the resource dependent uses provided for in LUP Policies 8 and 18 would provide an economic use, (2) residential use of the property would provide an economic use, and (3) the applicants had a reasonable investment backed expectation that such a properly mitigated residential use would be allowed on their property, there is a reasonable possibility that a court might



determine that the final denial of a residential use based on the inconsistency of this use with LUP Policies 8 and 18 could constitute a taking. Therefore, consistent with Coastal Act Section 30010 and the Constitutions of California and the United States, the Commission determines that implementation of LUP Policies 8 and 18 in a manner that would permanently prohibit residential use of the subject property is not authorized in this case.

Having reached this conclusion, however, the Commission also finds that Section 30010 only instructs the Commission to construe the policies of the Coastal Act, and certified Local Coastal Programs, in a manner that will avoid a taking of property. It does not authorize the Commission to otherwise suspend the operation of or ignore these policies in acting on permit applications. Moreover, while the applicants in this instance may have reasonably anticipated that residential use of the subject property might be allowed, the Del Monte Forest Land Use Plan and Implementation Plan also provided notice that such residential use would be contingent on the implementation of mitigation measures necessary to minimize the impacts of development on environmentally sensitive habitat. Thus, the Commission must still comply with the requirements of LUP Policies 8 and 18 to the maximum extent feasible by protecting against the significant disruption of habitat values at the site, and avoiding impacts that would degrade these values, to the extent that this can be done consistent with the direction to avoid a taking of property.

In the present situation, there are several conditions that the Commission can adopt that implement the Del Monte Forest Land Use Plan Policies 8 and 18 to the maximum extent feasible, while still allowing a reasonable size house on the property. As conditioned, 7,650 square feet (18%) of the 42,121 square foot parcel will be covered with building and paving. As a result, this area of dune habitat will be permanently lost, and residential activities can be expected to disrupt an additional area in the immediate vicinity of the house. However, the extent of this disruption and land alteration can be mitigated to the maximum extent feasible by the implementation of appropriate conditions.

County conditions of approval 17, 18, 20, 21, 25, 26, 29, 31-33 and 37 were not adequate to sufficiently protect the site's sensitive habitat qualities and they were deleted. Therefore, several additional conditions are necessary to offset these direct and indirect project impacts as discussed in these findings. Most importantly, Special Condition No. 3 requires that the area of the property that will not be developed shall be preserved in open space subject to a deed restriction. This recorded restriction shall prohibit uses that are inconsistent with habitat restoration and preservation, and is needed to ensure that future owners are aware of the constraints associated with this site. Additionally, Special Condition No. 1 limits coverage of dune habitat and specifically forbids the building of the 780 square foot stone patio in front of the house, and the excess turnaround/guest parking area added to the driveway.

Because of this inconsistency with the LCP, the project must be conditioned to protect sensitive coastal resources. The project has been conditioned to reduce the size of the driveway and to remove the stone terrace, thereby reducing the amount of dune habitat that will be lost, and to protect the remaining dune habitat through restoration, limitation of fence design to that which is 75% open, and a deed restriction prohibiting further development in the protected areas. The project has also been conditioned to require the finished floor of the proposed house to be at 37.0 feet in elevation to reduce the amount of grading and landform alteration required for the development.



In addition to the fact that the site is comprised entirely of ESHA, it is also located in a highly visible area of a designated viewing corridor along 17-Mile Drive and in sight of the Bird Rock pullout. Thus, while any development on the site will result in visual impacts, the visual impacts are expected to be minimal due to the existing residential use of the area.

Strict adherence to the screening aspect of Policies 51 and 57 would conflict with ESHA policies because low-growing native dune plants aren't generally suitable for screening, the Del Monte Forest Land Use Plan states that the protection of natural resources takes precedence over other resource concerns. *Chapter 6* provides that proposals "must satisfy the natural resource protection policies" of the plan, and that "If land use and natural resource protection policies conflict, resource protection policies shall prevail"(Emphasis added). Thus, staff notes that the conditioned project could be accepted because the LCP prioritized the protection of natural resources because the new design has been reduced in size and coverage, and also provides for protection and enhancement of dune resources on the remainder of the site.

In this instance, the applicant proposes to build a house that is larger and more visually intrusive than the existing structure. The existing house is a good example of compliance with Policy 56 because it is a one story, sandy-colored structure, with a flat roof that is stepped up gradually to simulate the gradual slope of the dunes, and it appears subordinate to the dunes (See Exhibit K). However, the proposed house can also be found consistent with Policy 56 because of the subjective nature of the statement that structures must be "subordinate and blended into the environment", for which the LCP offers no specific criteria (i.e. based on height, bulk, square footage of dune coverage, etc.). Given the fact that many of the homes in this 22-lot section of the Asilomar Dunes Complex, 13 of which front on 17-Mile Drive, are older homes, the lots are likely to "recycle" in the foreseeable future. With the turnover of these older homes, it is also likely that this policy and the issue of "subordinate to and blended into the environment" will be of greater importance as the smaller existing homes are demolished and larger homes are proposed in their stead. It would benefit the County to more clearly define designs that are "subordinate and blended into the environment" to give guidance to future applicants and to better preserve both the habitat and visual qualities of this area.

Conclusion

The project does not conform to LCP policies calling for the protection and maintenance of Environmentally Sensitive Habitat areas. Therefore, the project must be conditioned to remove the guest parking area and the terrace area in front, to restrict grading to that necessary to keep the finished floor elevation at 37.0 feet, to restore the balance of the lot to native dune vegetation and to place the remainder of the lot outside the building envelope in a deed restriction to mitigate impacts to the sensitive habitat.

E. California Environmental Quality Act (CEQA)

Section 13096 of the Commission's administrative Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures



available that would substantially lessen any significant adverse effect that the activity may have on the environment.

The environmental review of the project conducted by commission staff involved the evaluation of potential impacts to relevant coastal resource issues, including environmentally sensitive dune habitat, visual resources and archaeologically sensitive resources. This analysis is reflected in the findings that are incorporated into this CEQA finding.

The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA. This staff report has discussed the relevant coastal resource issues with the proposal, and has recommended appropriate mitigations to address adverse impacts to said resources. Accordingly, the project is being approved subject to conditions that implement the mitigating actions required of the Applicant by the Commission (see Special Conditions). As such, the Commission finds that only as modified and conditioned by this permit will the proposed project not have any significant adverse effects on the environment within the meaning of CEQA.

